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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/760,119	01/17/2004	Qin Chen	130-040	7348

27776 7590 10/18/2007

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EXAMINER	
TOOMER, CEPHIA D	
ART UNIT	PAPER NUMBER
1797	
MAIL DATE	DELIVERY MODE
10/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/760,119	CHEN ET AL.	
	Examiner	Art Unit	
	Cephia D. Toomer	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 July 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-98* is/are pending in the application.

4a) Of the above claim(s) *99-133* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-98* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This Office action is in response to the amendment filed July 23, 2007 in which claims 1, 20, 32, 37, 54, 69, 79, 84 and 94 were amended.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1-8, 10-12 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao (US 6,497,735).

Tao teaches a vegetable lipid composition comprising 51-100 % by weight of a triglyceride or a free fatty acid/triglyceride mixture and up to 49% by wt of a petroleum wax (see abstract; col. 1, lines 54-65). The petroleum wax having a melting point of 50-85 °C may be paraffin or microcrystalline (see col. 2, lines 2-4; col. 4, lines 36-48). The triglycerides may be fully hydrogenated and the fatty acids are preferably saturated (see col. 3, lines 5-7). The vegetable lipid-based compositions begin to soften around 59 °C (see col. 5, lines 31-41). Tao teaches that the composition may contain UV absorbers, antioxidants, odorants and colorants (see col. 5, lines 4-14). It should be noted that Applicant's intended use is given no patentable weight.

Tao fails to teach hat the fragrance is encapsulated in the wax. However, no unobviousness is seen in this difference because the prior art teaches mixing the wax components with the fragrance. This teaching suggests that the fragrance is encapsulated with the wax.

Tao fails to teach the iodine number and the color speckles. However, it would have been obvious to one of ordinary skill in the art to optimize the triglyceride/fatty acid to obtain the desired Iodine number in order to produce a solid candle.

With respect to the color speckles, Tao teaches that colorants are used in the invention. To select color speckles as the colorant is merely a design choice and does not impart patentability to the claims.

2. Claims 9, 13, 37-47 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao in view of Anderson (US 6,599,334).

Tao has been discussed above. Tao fails to teach the use of a binder. However, Anderson teaches this difference in a soybean wax composition.

It would have been obvious to one of ordinary skill in the art to employ the synthetic waxes of Anderson because he teaches that the waxes bind and disperse the fragrance through the candle composition, hardens the candle and reduce the formation of air bubbles (see col. 6, lines 31-35).

3. Claims 14-18, 20-27, 29-31, 33-36, 69-74, 76-78, 84-89 and 91-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao in view of Marcus (US 4,568,270).

Tao has been discussed above. Tao fails to teach that the candle of his invention is encased with a layer of petroleum wax. However, Marcus teaches this difference.

Marcus teaches a candle comprising an outer shell wherein the shell is formed of paraffin wax (see abstract). The shell has a melting point within the range of 139-145 F (59-63 C) (see col. 3, lines 2-3). Marcus teaches that the shell has a cross-sectional area that is smaller than the core (see col. 3, lines 50-67). Marcus teaches that the shell may be formed through dripping or molding the shell around the core (see col. 4, lines 51-56).

It would have been obvious to one of ordinary skill in the art to encase the claimed candle in petroleum wax because Marcus teaches that encasing a candle provides structural support for the candle.

With respect to claims 21, 36, 72 and 87, it would have been obvious to one of ordinary skill in the art to optimize the triglyceride/fatty acid to obtain the desired Iodine number in order to produce a solid candle.

4. Claims 28, 32, 48-52, 54-68, 75, 79-83, 90 and 94-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tao, Marcus and Anderson.

Tao has been discussed above. Tao fails to teach that the candle of his invention is encased with a layer of petroleum wax. However, Marcus teaches this difference.

Marcus teaches a candle comprising an outer shell wherein the shell is formed of paraffin wax (see abstract). The shell has a melting point within the range of 139-145 F

(59-63 C) (see col. 3, lines 2-3). Marcus teaches that the shell has a cross-sectional area that is smaller than the core (see col. 3, lines 50-67). Marcus teaches that the shell may be formed through dripping or molding the shell around the core (see col. 4, lines 51-56).

It would have been obvious to one of ordinary skill in the art to encase the claimed candle in petroleum wax because Marcus teaches that encasing a candle provides structural support for the candle.

Tao fails to teach the use of a binder. However, Anderson teaches this difference in a soybean wax composition.

It would have been obvious to one of ordinary skill in the art to employ the synthetic waxes of Anderson because he teaches that the waxes bind and disperse the fragrance through the candle composition, hardens the candle and reduce the formation of air bubbles (see col. 6, lines 31-35).

With respect to claim 55, it would have been obvious to one of ordinary skill in the art to optimize the triglyceride/fatty acid to obtain the desired Iodine number in order to produce a solid candle.

2. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that the prior art fails to teach that its candle incorporates a high fragrance load.

The claims merely recite that the fragrance is encapsulated in the wax. The prior art accomplishes this by merely mixing the wax components together with the fragrance.

Applicant argues that Tao's invention fails to teach a vegetable wax-based composition with a high fragrance load that provides an exceptional burning behavior. Tao teaches a candle composition that is similar to that of the present invention. The skilled artisan having Tao before him/her would have a reasonable expectation that the candle composition of Tao would provide exceptional burning behavior.

Applicant argues that Anderson fails tot each a vegetable wax-based composition suitable for manufacturing a candle by compression that contains a high fragrance load produced by encapsulating the fragrance with petroleum wax, while being able to provide exceptional burning behavior.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues that the encasing layer of the present invention is operable to provide a complete burn of the candle and is not a structural support.

The prior art teaches an encasing layer and it would be reasonable to expect that the layer would provide a complete burn.

Applicant argues that Marcus does not disclose a candle that contains an outer shell that is capable of providing a high fragrance load as disclosed by the Applicants.

Marcus was not relied upon for teaching this feature. Marcus was relied upon for teaching encasing a candle with a wax layer. As set forth above, one cannot show

nonobviousness by attacking references individually where the rejections are based on combinations of references.

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on 571-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cephia D. Toomer
Primary Examiner
Art Unit 1797

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